



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD)Nos.287 and 288 of 2017

Cr1.R.C.(MD)No.287 of 2017:

P.Sivasubramanian : Petitioner/Petitioner

Vs.

The State rep. by its
The Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam. : Respondent/Complainant.

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records relating to the order dated 07.03.2016 made in Cr.M.P.No.1628 of 2016 in Crime No.255 of 2014 on the file of the learned Judicial Magistrate, Rajapalayam and set aside the same and consequently, direct the learned Judicial Magistrate, Rajapalayam to pass order for further investigation.

For Petitioner : Mr.Niranjana S.Kumar,
For Mr.R.Ragavendran
For Respondent : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.V.Neelakandan,
Additional Public Prosecutor

Cr1.R.C.(MD)No.288 of 2017:

P.Sivasubramanian : Petitioner/Petitioner

Vs.

M.Dinakaran : Respondent/Respondent.

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records relating to the order dated 07.03.2016 made in Cr.M.P.No.1627 of 2016 in Crime No.255 of 2014 on the file of the learned Judicial Magistrate, Rajapalayam and set aside the same and consequently, direct the learned Judicial Magistrate, Rajapalayam to pass order for further investigation.



For Petitioner : Mr.Niranjana S.Kumar,
For Mr.R.Ragavendran
For Respondent : Mr.M.Mahaboob Athiff,
For M/s.Ajmal Associates

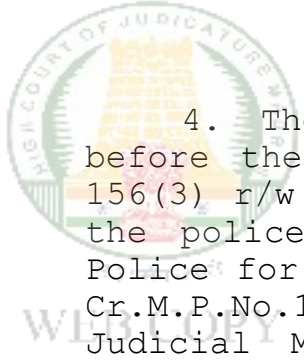
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COMMON ORDER

The petitioner's brother was brutally murdered on 13.05.2014 and on the complaint given by Sakthi Saravanan (the brother of the deceased and the petitioner), the respondent police registered a case in Crime No.255 of 2014 under Sections 147, 148, 341, 294(b), 302 and 506(2) of the Indian Penal Code against five named persons. The investigation was taken over by Mr.M.Dinakaran, Inspector of Police, Rajapalayam North Police Station. This petitioner was not satisfied with the progress in the investigation and, therefore, he filed CrI.O.P.(MD)No.1206 of 2015 for transfer of investigation making certain allegations against M.Dinakaran, Inspector of Police, Rajapalayam North Police Station. It is the contention of the petitioner that the motive projected by the police is a smoke-screen, but, whereas, behind that, eight others were involved in a conspiracy to get rid of his brother. On these allegations, he filed the petition for transfer.

2. When the transfer application came up before this Court on 27.01.2015, it was brought to the notice of this Court that the police were attempting to complete the investigation hurriedly in order to frustrate the plea for transfer. Therefore, it appears that, this Court had orally instructed the learned Additional Advocate General for the State to instruct the Investigating Officer not to file the final report. However, M.Dinakaran, Inspector of Police, Rajapalayam North Police Station seems to have filed the final report on 24.02.2015 against five accused for the offences under Sections 147, 148, 341, 294(b), 302 r/w 109 and 506(ii) of the Indian Penal Code before the learned Judicial Magistrate, Rajapalayam and the case has now been committed to the Court of Sessions in S.C.No.127 of 2015.

3. When CrI.O.P.(MD)No.1206 of 2015 came up for final disposal on 09.03.2015, the State brought to the notice of this Court that the investigation has been completed and final report has been filed. The learned Judge took serious exception to the manner in which the final report was filed hurriedly, despite his oral instructions, but, however, did not choose to quash the final report and order transfer of investigation. However, the learned Judge directed M.Dinakaran, Inspector of Police to pay Rs.10,000/- to Anbagam, Home for Mentally Challenged, D.R.O. Colony, Madurai, as an act of expiation. The petitioner took the matter to the Supreme Court in S.L.P.(CrI.)No.4652 of 2015 and the Supreme Court has dismissed the petition in limine on 06.07.2015.



4. Thereafter, the petitioner filed Cr.M.P.No.1627 of 2016 before the learned Judicial Magistrate, Rajapalayam under Section 156(3) r/w 200 of the Code of Criminal Procedure for a direction to the police to register an FIR against M.Dinakaran, Inspector of Police for screening the true offenders. The petitioner also filed Cr.M.P.No.1628 of 2016 under Section 173(8) before the learned Judicial Magistrate, Rajapalayam for further investigation. The learned Judicial Magistrate, Rajapalayam has dismissed both the petitions on 07.03.2016 by two separate orders, aggrieved by which, the petitioner is before this Court.

5. Heard Mr.Niranjan S.Kumar, learned counsel for the petitioner in both the revisions, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondent police in CrI.R.C.(MD)No.287 of 2017 and Mr.M.Mahaboob Athiff, learned counsel appearing for the respondent in CrI.R.C.(MD)No.288 of 2017.

6. Mr.Niranjan S.Kumar, learned counsel for the petitioner submitted that the murder was master-minded by one Karuppasamy and Duraipandian and the arrested accused are merely his stooges. He submitted that M.Dinakaran, Inspector of Police is a close friend of Seenii @ Seenivasan (A-1) in S.C.No.127 of 2015 and that both of them were together at various places including on excursions, as could be seen from their face book posts. Therefore, the learned counsel submitted that, at the instance of Seenii @ Seenivasan(A-1), the investigation did not go behind the five assailants.

7. Per contra, the learned counsel for the other side refuted the allegations.

8. Be that as it may, the fact remains that the prayer of this petitioner for transfer of investigation on the ground of mala fide has been rejected by this Court and the same has also been confirmed by the Supreme Court. Hence, the same cannot be agitated again and again in different forms.

9. A prosecution of the Investigating Officer cannot be ordered by the Court under Section 156(3) of the Code of Criminal Procedure merely on such vague allegations as that would demoralise the morale of the police. Similarly, after the cognizance is taken by the Court, further investigation cannot be ordered either at the request of the defacto complainant or the accused. In such view of the matter, the two orders passed by the Court below do not warrant interference.

10. In the result, these Criminal Revision Cases are devoid of merits and accordingly, the same are dismissed. However, the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur is directed to complete the trial in S.C.No.127 of 2015, within a period of six months from the date of receipt of a copy of this order. However, the accused shall cross-examine the

witnesses on the day they are examined in chief, as directed by the Supreme Court in Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542. If the accused adopt any dilatory tactics, it is always open to the Trial Court to remand them to custody, in view of the law laid down by the Supreme Court in State of U.P. vs. Shambhu Nath Singh reported in 2001(4) SCC 667. If the accused abscond, a fresh Information Report can be registered against them under Section 229-A of the Indian Penal Code.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputtur.

2.The Judicial Magistrate,
Rajapalayam.

3. The Chief Judicial Magistrate,
Virudhunagar at Srivilliputhur.

4.The Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.Ajmal Associates, SR.No. 55226

+1CC to Mr.R.Ragavendran, Advocate, SR.No. 55280

Common Order made in
Crl.R.C.(MD)Nos.287 and 288 of 2017

Dated:-
14.03.2018

SML

AM/KKR/SAR 1/26.03.2018/4P/8C